

FILE COPY
In the Supreme Court
OF THE
United States

OCTOBER TERM, 1946

No. 672

SOEWAPADJI and 218 alien Indonesian Seamen similarly situated,

Petitioners,

vs.

I. F. WIXON, as Custodian of Petitioners
in the United States,

Respondent.

PETITION FOR REHEARING.

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*To the Honorable Fred M. Vinson, Chief Justice of the
United States, and to the Honorable Associate Jus-
tices of the Supreme Court of the United States:*

Your petitioners, Soewapadji and 218 alien Indonesian seamen, respectfully allege:

A.

STATEMENT OF MATTER INVOLVED.

On December 16, 1946, this Court denied the petition for certiorari filed by Soewapadji and 218 alien

Indonesian seamen similarly circumstanced, which petition was docketed in the office of the clerk of this Court, under No. 672, October term.

Under a dateline of December 16, 1946, Washington; the United Press stated:

“The court was told by the Justice Department that Dutch authorities have promised to take no ‘repressive action’ against the seamen.”

The only reason why a petition for habeas corpus was filed on behalf of these 219 Indonesian seamen, in the District Court of the United States, for the Northern District of California, was the fear that these Indonesians, if deported to Java, would be punished by the Dutch Government for conduct which that Government would construe to be treasonable.

The allegation of the original petition filed in the District Court was as follows:

“That the aliens hereinabove named are under warrant of deportation to Madoera, Netherlands East Indies; that your petitioner is informed and believes and upon such information and belief alleges the fact to be that said aliens are to be deported on the vessel ‘Marine Lynx’ from the Port of San Francisco tomorrow morning, June 13, 1946; that Madoera, Netherlands East Indies, is controlled by the British and Dutch Governments, as are other seaports of Java; that said Indonesian petitioners above-named are being deported for refusal to man Dutch or British ships sailing to Indonesia, and that to man said ships would be for these aliens an act of treason to the Government of the Republic of Indonesia to

whom they are subject and to which said aliens now claim allegiance; that to deport the said aliens at this time to the Netherlands East Indies would be a violation of human rights and cruel and unusual punishment, and a violation of the United States Constitution and of the fundamental principles of the American policy of giving political asylum to the members of a race struggling to establish their own form of government and to free themselves from colonial exploitation, in that if said aliens are disembarked in the Netherlands East Indies they will be arrested as disloyal and traitorous to the Netherlands Government and subjected to severe punishment and possible execution." (Tr. p. 4.)

This allegation was never, at any stage of the proceedings, or in any Court, denied.

It was clearly apparent to all counsel in the case that the petitioners were, under ordinary circumstances, unquestionably deportable. They had had hearings, "fair on their face", and the proceedings would, under ordinary circumstances, have been regarded as beyond legal attack or review.

But there was, and still is, well-founded fear that deportation means, in this case, imprisonment and possibly death to the deported.

Notwithstanding that the unusual circumstances of this case above set forth were not denied anywhere in the record, and constituted the sole basis upon which the litigation was instituted and carried to the highest court in the land, this Court, according to the United

Press, accepted hearsay statements *ex parte* and in the absence of counsel for petitioners, to the effect that the Dutch Government had given assurances to our State Department, and the State Department had told the Justice Department, that no repressive action would be taken against the petitioners. Although the United Press does not so state, the only inference to be drawn from the dispatch quoted in full in Appendix A is that, upon the basis of these *ex parte* and hearsay representations by the Department of Justice, this Court declined to grant a petition which, in the absence of such representations, it might well have granted.

It is respectfully submitted that this is an unprecedented situation—when the highest court in the land exercises its discretion to grant or deny *certiorari* upon the unsupported, unsworn statements of the Department of Justice, concerning hearsay assurances made by the Dutch Government, and transmitted to the Justice Department through the State Department. And the error becomes all the more clearly evident when it is realized that these unsworn, hearsay statements went to the sole issue in the case.

The consequent danger to litigants is well illustrated by the following telegraphic correspondence.

Ever since the 16th day of December, 1946, counsel has endeavored, by every means within his power, to ascertain precisely what representations have been made by the Dutch Government to the State Department, what representations the State Department

made to the Justice Department, and what representations the Justice Department made to this Court—and with a signal lack of success.

On December 16, 1946, counsel sent a night letter to the Attorney-General, copy of which is as follows:

"You doubtless know that the Supreme Court today denied the Petition of Soewapadji and 218 Indonesian seamen for certiorari. We have therefore exhausted our legal remedy. There remains, however, executive and legislative relief. Within the last three weeks, the President has by executive order suspended deportation indefinitely of 48 Estonians whose legal position is certainly no better than, nor different from, that of the 219 Indonesians represented by me as their attorney. In the closing hours of the 79th Congress, Senator Langer introduced a Resolution to suspend deportation of all Indonesians until December 31st, 1947. We are presenting a Petition to the President with signers in excess of 5000, requesting a stay of deportation. The cause of the Indonesians is supported by the most responsible and representative citizens of the country, both east and west, including, here in San Francisco, Bishop Edward L. Parsons, Robert W. Kenny, Attorney General of this State, the most powerful trade unions, both AFL and CIO, and their leaders. In the interest of fair play, in which I know you believe, I am urging you to refrain from any deportation of the Indonesians until both the President and the 80th Congress have had an opportunity to act. Please wire collect your views and what you propose to do."

Notwithstanding counsel's request for telegraphic reply at his expense, the above night letter was completely ignored by the Attorney-General, so that, on December 18, 1946, counsel sent a full-rate telegram to the Attorney-General, copy of which is as follows:

"Please refer to my night letter to you dated December 16, 1946 relating to Soewapadji case in which petition for certiorari was denied. The United Press under dateline Washington, December 16, 1946, states the Court was told by Justice Department that Dutch authorities have promised to take no repressive action against the men. In view of fact that lives of 219 people are here at stake, I am asking you for a categorical report of what representations were made to you by the Dutch Government and by whom. If any such representations have been made, I insist that they be in such form and attended with such publicity as to insure amnesty to the Indonesians."

Not until December 20, 1946, did counsel receive any reply whatsoever from the Attorney-General. On December 20, 1946, counsel received a telegram, copy of which is as follows:

"Regarding your telegram December 18 concerning Indonesians, assurance no reprisals by Dutch authorities transmitted to this Service by State Department, as such matters with foreign governments handled by that Department."

On the same day, there was served on counsel, by the Immigration and Naturalization Service in San Francisco, a letter, copy of which is as follows:

"Gentlemen:

The Attorney General has directed that I communicate the following message to you:

'Your petition for further stay deportation 219 Indonesians whose cases have been decided by Supreme Court is denied. Under law their deportation mandatory. With Reference to the possibility of their persecution for political reasons upon return to Java you are advised competent Netherlands authorities in United States have given assurance the Netherland Government is on record to the effect that none of the Indonesian seamen in question need fear prosecution or any other reprisals from Netherland authorities if they are returned to Java. In addition State Department has been consulted and has expressed the opinion that political considerations in these cases are not such as to require a deviation from the normal procedure for deportation of deserting alien seamen.'

Very truly yours,

/s/ I. F. WIXON

I. F. Wixon,

District Director

San Francisco District."

In view of the evasive replies of the Attorney-General and the tacit refusal to give categorical answers to questions asked, counsel decided to approach the Dutch Government itself. Accordingly, on December 21, 1946, counsel sent a night letter to Dr. A. Loudon, the Netherlands Ambassador at Washington, D. C., copy of which is as follows:

"I am representing 219 Indonesian seamen held by Immigration Department in Crystal City,

Texas, under warrants of deportation to Java. Have conducted litigation on their behalf for writ of habeas corpus through all courts and up to Supreme Court which last Monday denied our petition. Our action was based on fear that Netherlands Government would punish these Indonesians as traitors if they were returned to Java. San Francisco Chronicle this morning published statement that proposed treaty between Republic of Free Indonesia and Netherlands Government has been ratified by Netherlands Parliament. Will Your Excellency please confirm fast wire collect whether or not this is the case and also whether or not treaty includes full amnesty to all who have taken part in struggle for Indonesian freedom, including 219 seamen I represent. Upon your answer will depend my future moves. Please give this matter your immediate attention."

The request in this night letter "for immediate attention" brought no reply until December 24, 1946, at which time a telegram was received from the Netherlands Ambassador, copy of which is as follows:

"Referring to your telegram of December 21 I beg to point out as known already to Messrs. Katz, Gallagher and Margolis Los Angeles that several months before the signing of the agreement mentioned in your telegram the Indonesian seamen represented by you have been given explicit assurances by the Netherlands authorities that no retaliatory measures of any kind will be taken against them and that on their arrival in the Netherlands East Indies they will be allowed to proceed freely wherever they wish to go."

A glance at this telegram shows its evasive character. The so-called assurances are based upon some communication, previously made to Katz, Gallagher and Margolis, of which counsel is assumed to be ignorant.

On the same day, December 24, 1946, counsel prepared a night letter to Dr. A. Loudon, the Dutch Ambassador, but inasmuch as this was the day before Christmas, the night letter was not actually dispatched until December 26, 1946, owing to disruption due to the holidays. A copy of this night letter is as follows:

"Reurtel today, neither Gallagher nor I have ever been satisfied with assurances referred to by you. They were expressed in document addressed 'To Whom It May Concern' and signed by a deputy consular officer in Los Angeles. Dr. Van Woerden, Consul General here, says no one on Pacific Coast has authority to give such assurances. Am therefore asking you for categorical answer my questions: Has the agreement referred to been ratified by Netherlands Parliament? Does it contain general amnesty. Think assurances should be addressed to our State Department and not to any individual nor 'To Whom It May Concern'. Issue is too serious to rest security of 219 people upon such indefinite statements heretofore made. What I want now is definite assurances to our Government and not any reference to assurances heretofore given to Gallagher. In absence of such assurances shall be obliged to petition Supreme Court for rehearing and challenge the accuracy of representations made to the Court by Justice Department. Please reply fast wire

collect as my time to petition for rehearing is limited."

The following day, December 27, 1946, a telegram was received from the Dutch Ambassador, copy of which is as follows:

"Suggest that you apply to State Department."

Having met nothing but evasion and indifference from the Attorney-General and the Dutch Ambassador, counsel, in despair, upon receipt of the last quoted telegram, sent a full-rate telegram to our State Department, on December 27, 1946, copy of which is as follows:

"December 16, 1946, Supreme Court denied petition for certiorari concerning application for writ habeas corpus for 219 Indonesian seamen represented by me, case 672 October term, and announced that it had been informed by Justice Department that Netherlands Government had given assurances that no repressive action would be taken against these seamen. Have endeavored ascertain from Loudon Netherlands Ambassador and Clark Attorney General categorical answers to these questions: One, did Netherlands Parliament as announced by Associated Press December 21 ratify treaty between Free Indonesian Republic and Netherlands Government establishing new geographical and political subdivision in East Indies, and Two, does treaty contain complete amnesty for all who fought for Indonesian independence including the seamen I represent. So far have received nothing but evasive answers from Netherlands Ambassador and Clark. Former suggests I communicate you. I have only 25 days

from December 16 to file petition for rehearing Supreme Court and unless I can get assurances of amnesty and ratification of treaty, shall be obliged file such petition, attacking accuracy and good faith Justice Department. In view of shortness of time I shall prepare petition for rehearing Tuesday unless before close business Monday I received satisfactory reply from you. Wire reply collect. Also please advise me what representations you made to Justice Dept. re security of the seamen."

As yet, up to 3 P.M. on this 31 day of December, 1946, counsel has received no reply.

B.

JURISDICTION.

The jurisdiction of this Court to entertain this petition for rehearing rests upon Rule 33 of the rules of this Court.

C.

CERTIFICATE OF COUNSEL.

In accordance with Rule 33 of the Rules of this Court, counsel hereby certifies that this petition is filed in good faith and not for purposes of delay.

D.

**THE REASON WHY A REHEARING SHOULD
BE GRANTED.**

The foregoing telegraphic correspondence illustrates most graphically the reason why no court should ever rely upon unsworn, vague, hearsay representations, which cut to the heart of the principal issue in a case. Here we have on the record an uncontradicted statement that these Indonesians, if deported, would probably be punished by the Dutch Government, either by imprisonment, or maybe by death. The Justice Department, in the face of this record, makes unsworn, hearsay contrary representations to the Court, upon the basis of which, apparently, the Court denied the petition for certiorari.

On December 28, 1946, for the first time, counsel obtained an unofficial copy of the draft agreement between the Dutch Government, represented by the Commission General, and the Government of the Republic of Indonesia, represented by the Indonesian delegation, which, according to press reports, was ratified by the Dutch Parliament on December 20, 1946. A copy of this agreement is found in Appendix B.

It contains no word of amnesty. And yet ever since the 16th day of December, 1946, the Attorney-General and the Netherlands Ambassador have consistently declined to answer counsel's question of whether or not the treaty did contain an amnesty clause.

To this date, counsel has no assurances, upon which any reliance can be placed by anyone, that these Indonesian seamen are less in jeopardy than when the petition for habeas corpus was filed on June 12, 1946.

The Attorney-General's wire of December 20, 1946, to counsel refers to assurances by the Dutch authorities transmitted to the Department of Justice by the State Department, and yet the Dutch Ambassador in Washington refuses to confirm such assurances, except to refer to alleged assurances given to Leo Gallagher, in Los Angeles, many months ago, which assurances Dr. Van Woerden, the Dutch Consul here, says no one on the Pacific Coast had authority to give.

The reluctance of all parties in interest to confirm the alleged assurances made by the Dutch Government with respect to the safety of these Indonesians is easily understood in the light of a cablegram received this morning, December 31, 1946, even as counsel is preparing this petition. This cablegram is a reply to one sent on December 21, 1946, by the Committee for Indonesian Freedom, in San Francisco, to the Indonesian Federation of Labor Unions, in Singapore, commonly known as the P.K.B.I., and a copy of which cablegram is as follows:

"Please cable back whether agreement in Indonesia is definite in view of deportation of Indonesian seamen from America and safe arrival in Republic."

The reply of P.K.B.I., addressed to the Committee for Indonesian Freedom, in San Francisco, and received here today, reads as follows:

“Agreement not yet ratified Complete Dutch blockade and fighting on all fronts Please wait.”

Here is the definitive evidence that the agreement set forth in Appendix B hereof has not yet been ratified, is not in effect, and that the war waged by the Dutch upon the Indonesians continues with renewed ferocity. It is no wonder, under these circumstances, that the Netherlands Ambassador in Washington is unwilling to give counsel categorical assurances concerning the safety of petitioners, if deported.

Under these circumstances, the Dutch Government is not to be trusted. The record of that Government, as far as Indonesia is concerned, is shameful. On December 7, 1942, Queen Wilhelmina promised the Indonesian people a full and equal partnership with the Dutch Government, a promise cynically realized in the Dutch Government's effort to stifle Indonesian freedom by force of arms. This is the same Dutch Government which fled from Indonesia upon the approach of the Japanese, and left the Indonesians to defend themselves as best they could. This is the same Dutch Government whose ambassador in Washington declines to answer legitimate questions propounded to him by counsel.

Under these circumstances, may counsel be permitted to doubt the sincerity and integrity of this Dutch Government. May counsel call to the attention

of the Court that the feeling of Indonesians in America is that the recent negotiations, culminating in the draft agreement set forth in Exhibit B hereof, and not yet ratified, are merely a blind, designed to keep the Indonesian question off the agenda of United Nations until that organization should adjourn its New York sessions.

Under these circumstances, we earnestly urge upon the Court, if its decision denying the petition for certiorari was at all influenced by the slipshod, careless, unsworn, hearsay statements of the Department of Justice, to grant a rehearing, for the purpose of determining factually whether or not these Indonesians are in jeopardy of their lives. The record of the Department of Justice throughout this case reflects little credit upon it. The curt, autocratic, and arbitrary denial of a stay, so that other branches of the Government, the executive and legislative, might intervene in this matter, as both have done on previous occasions, is an index of the persecution to which these Indonesians have been subjected by the Department of Justice under the guise of routine deportation proceedings. Evidently the Attorney-General fears that his prey might escape him, either by an Executive Order, similar to that made by the President in the case of the 48 Estonians, or by Resolution of Congress, such as was introduced by Senator Langer at the 79th Congress.

If, therefore, the representations made by the Department of Justice played any role in the decision

of this Court to deny the petition for certiorari, a rehearing should be granted, to determine whether or not there is any factual basis for the representations so glibly made.

Dated, San Francisco, California,
January 6, 1947.

Respectfully submitted,

HAROLD M. SAWYER,

Counsel for Petitioners.

GEORGE R. ANDERSEN,

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Of Counsel.

(Appendices A and B Follow.)

Appendix A

"THE HAGUE, Dec. 20 (U.P.)—The lower chamber of the Netherlands Parliament today approved an Indonesian agreement providing for a proposed United States of Indonesia within the Dutch empire.

"The vote was 65 to 30. It was on a motion by Professor C. Romne, Catholic parliamentary leader, to support the government's Indonesian agreement.

"A commission general for Indonesia will be authorized to sign an agreement which it has negotiated with the Indonesia republic."

Appendix B

"DRAFT AGREEMENT

The NETHERLANDS GOVERNMENT, represented by the Commission General, and the GOVERNMENT OF THE REPUBLIC OF INDONESIA, represented by the Indonesian delegation, moved by the sincere desire to ensure the good relations between the peoples of the Netherlands and Indonesia in new forms of voluntary cooperation, which offer the best guarantee for a sound and strong development of both countries in the future, and which make it possible to give a new foundation to the relationship between the two peoples, agree as follows, and will submit this agreement at the shortest possible notice to the approval of the respective parliaments:

"Article 1: The Netherlands Government recognizes the Government of the Republic of Indonesia as exercising the de facto authority over Java, Madura and Sumatra. The areas occupied by Allied or Netherlands forces shall be included gradually, through mutual co-operation, in the Republic territory. To this end the necessary measures shall at once be taken in order that this inclusion shall be completed, at the latest, on the date mentioned in Art. 12.

"Article 2: The Netherlands Government and the Government of the Republic shall co-operate in the rapid formation of a sovereign, democratic state on a federal base, to be called the United States of Indonesia.

"Article 3: The United States of Indonesia shall comprise the entire territory of the Netherlands-Indies, with the proviso, however, that in case the population of any territory, after due consultation with the other territories, should decide by democratic process that they are not or not yet willing to join the United States of Indonesia, there can be established a special relationship for such a territory to the States and to the Kingdom of the Netherlands.

"Article 4: Component parts of the United States of Indonesia shall be the Republic, Borneo and the Great East, without prejudice to the right of the population of any territory to decide by democratic process that its position in the United States of Indonesia shall be arranged otherwise.

"Without derogating from the provisions in Article 3 and in the first paragraph of this Article, the United States of Indonesia may make a special arrangement concerning the territory of their capital.

"Article 5: The constitution of the United States of Indonesia shall be determined by a constituent assembly composed of democratically nominated representatives of the Republic and of the other future partners of the United States, to which the following paragraph of this article shall apply.

"Both parties shall consult each other on the method of participation in this constituent assembly by the Republic, by the territories not under the authority of the Republic, and by the groups of the population not or insufficiently represented, with due observance of

the responsibility of the Netherlands Government and of the Government of the Republic respectively.

“Article 6: To promote the joint interests of the Netherlands and Indonesia, the Netherlands Government and the Government of the Republic shall co-operate in the establishment of a Netherlands-Indonesian Union, by which the Kingdom of the Netherlands, the Netherlands-Indies, Surinam and Curacao, shall be converted into the said Union, consisting on the one hand of the Kingdom of the Netherlands, comprising the Netherlands, Surinam and Curacao, and on the other hand the United States of Indonesia.

“The foregoing paragraph does not exclude the possibility of a further arrangement of the relations between the Netherlands, Surinam and Curacao.

“Article 7: (1) The Netherlands-Indonesian Union shall have its own organs to promote the joint interests of the Kingdom of the Netherlands and the United States of Indonesia.

“(2) These organs shall be formed by the Governments of the Kingdom of the Netherlands and the United States of Indonesia and, if necessary, by the Parliaments of those countries.

“(3) As joint interests shall be considered co-operation on foreign relations, defence and, as far as necessary, finance, as well as subjects of an economic or a cultural nature.

“Article 8: The King (Queen) of the Netherlands shall be at the head of the Netherlands-Indonesian

Union. The decrees and resolutions concerning the joint interests shall be issued by the organs of the Union in the King's (Queen's) name.

"Article 9: In order to promote the interests of the United States of Indonesia in the Netherlands and of the Kingdom of the Netherlands in Indonesia, High Commissioners shall be appointed by the respective governments.

"Article 10: The Statute of the Netherlands-Indonesian Union shall furthermore contain provisions regarding:

- "a. the safeguarding of the rights of both parties towards one another and the guarantees for the fulfillment of their mutual obligations;
- "b. the mutual exercise of civic rights by Netherlands and Indonesian citizens;
- "c. a regulation containing provisions in case no agreement can be reached by the organs of the Union;
- "d. a regulation of the manner and the conditions of the assistance to be given by the services of the Kingdom of the Netherlands to the United States of Indonesia, as long as the services of the latter are not or insufficiently organized.
- "e. the safeguarding in both parts of the Union of the fundamental human rights and liberties, referred to in the Charter of the United Nations Organisation.

“Article 11: (1) The Statute of the Union shall be drafted by a conference of representatives of the Kingdom of the Netherlands and of the future United States of Indonesia.

“(2). The Statute shall come into effect after approval by the respective parliaments.

“Article 12: The Netherlands Government and the Government of the Republic shall endeavour to establish the United States of Indonesia and the Netherlands-Indonesian Union before January 1st, 1949.

“Article 13: The Netherlands Government shall forthwith take the necessary steps in order to obtain the admission of the United States of Indonesia as a member of the United Nations Organisation, immediately after the formation of the Netherlands-Indonesian Union.

“Article 14: The Government of the Republic recognises the claims of all non-Indonesians to the restoration of their rights and restitution of their goods as far as they are exercised or to be found in the territory over which it exercises *de facto* authority. A joint commission will be set up to effect this restoration and restitution.

“Article 15: In order to reform the government of the Indies in such a way that its composition and procedure shall conform as closely as possible to the recognition of the Republic and to the projected constitutional structure, the Netherlands Government, pending the realisation of the United States of Indonesia and of the Netherlands-Indonesian Union, shall forthwith initiate the necessary legal measures to adjust

the constitutional and the international position of the Kingdom of the Netherlands to the new situation.

“Article 16: Directly after the conclusion of this agreement both parties shall proceed to reduce their armed forces. They will consult together concerning the extent and the rate of this reduction and their co-operation in military matters.

“Article 17: (1) For the co-operation between the Netherlands Government and the Government of the Republic contemplated in this agreement, an organisation shall be called into existence, consisting of delegates to be appointed by each of the two governments, with a joint secretariat.

“(2) The Netherlands Government and the Government of the Republic shall settle by arbitration any dispute, which might arise from this agreement and which cannot be solved by joint consultation in a conference between these delegations. In that case a Chairman of another nationality with a deciding vote shall be appointed by agreement between the delegations, or if such an agreement cannot be reached, by the President of the International Court of Justice.

“FINAL CLAUSE.

“This agreement shall be drawn up in the Netherlands and the Indonesian languages. Both texts shall have equal authority.

“BATAVIA,

“15th November, 1946.”